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UNCLAS SECTION 01 OF 04 ANKARA 003040

SIPDIS

EB/TPP/IPE FOR JBOGER
PLEASE PASS USTR FOR JCHOE-GROVES AND MMOWREY
USPTO FOR JURBAN
USDOC FOR ITA/MAC/CRUSNAK

SENSITIVE
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TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PGOV](#) [TU](#)
SUBJECT: TURKEY: 2007 ADVANCE SPECIAL 301 INITIATIVE UPDATE

Ref: A) STATE 158938, B) STATE 107629

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Summary

1. (SBU) The Turkish government has made little progress on six action items in the 2007 Advance Special 301 Initiative Action Plan since we presented it to them in August. Foreign Trade Undersecretariat (FTU) officials enthusiastically accepted the plan but, we surmise, ran into resistance with the other agencies responsible for implementing the changes requested. On the first three action items, which deal with Pharmaceutical issues, the GOT has shown the most ambiguity and the least tangible action. For the piracy and counterfeiting action item, industry interest groups are pleased with the cooperation from the Turkish police but tell us that more is needed from Turkish Customs officials and the judiciary. The Ministry of Culture has taken the lead in ensuring that government offices use licensed software, as requested in the fifth item, but statistics are not yet available on compliance. FTU officials have agreed to a DVC with USTR in January, and we encourage USTR to use this opportunity to focus on the final action item, deficiencies in the Turkish IPR legislation implementing WIPO Internet Treaties. We would welcome a visit by D/USTR Veroneau in January to reinforce our IPR message but recognize that there is little time left to complete these action items before the 2008 Special 301 Report and U.S.-Turkey TIFA talks. End summary.

Pharmaceutical Issues

2. (U) Action Items: 1) Provide quarterly updates to AiFD and the U.S. on the status of the remaining applications filed by generic pharmaceutical manufacturers prior to January 1, 2005, indicating whether or not any have been rejected or approved and which applications have yet to be completed by the applicant; 2) Amend the law that improperly terminates data protection upon the expiration of the Turkish patent term of protection; 3) Implement a system of coordination between Turkish health and patent authorities in order to prevent the issuance of marketing approvals for patent-infringing copies of pharmaceutical products.

3. (SBU) As with previous Special 301 cycles, Turkish officials have shown the greatest ambiguity on pharmaceutical issues. U.S. pharmaceutical companies operating in Turkey told us they are pleased with the Turkish Ministry of Health's (MOH) unofficial "moratorium" on the remaining generics applications filed prior to the January 1, 2005 start of Turkey's data exclusivity legislation. They welcomed our approach in the Advance Special 301 Initiative

that asked for quarterly updates on the status of these applications versus demanding action from the MOH on the applications. They currently receive sporadic updates from the MOH every 3 - 6 months.

14. (SBU) After receiving the Advance Special 301 Initiative in August, FTU officials asked for our assistance in organizing a meeting to include Turkey's research-based pharmaceutical lobby group AiFD, AiFD's U.S. membership, FTU and the Ministry of Health (MOH) to discuss the pharmaceutical-related action items. We communicated this request to the PhRMA company local representative who heads the Local American Working Group (LAWG), but did not receive a response. We have now put FTU in direct contact with AiFD's Secretary General, Engin Guner, to arrange the meeting, but it has not yet occurred in part because of hesitation on the part of the companies to meet directly with the GOT on these issues.

15. (SBU) Guner told us that the top issue for research-based companies in Turkey has shifted in 2007 from data exclusivity to product reimbursement approval within the state healthcare system. He cautioned that pushing Turkey's MOH to make decisions on the outstanding generics applications filed prior to January 1, 2005, would most certainly prove counterproductive and bring favorable decisions for the generics manufacturers.

16. (SBU) U.S. PhRMA company representatives in Turkey are not overly concerned about the law that improperly terminates data protection upon the expiration of the Turkish patent term of protection. The current patent term lasts twenty years, far beyond even the most generous data exclusivity provisions. In theory, they understand why USTR would take issue with such a law and support its abolishment, and are somewhat concerned that at some point in the future, patent and data exclusivity terms could catch up with each other. They believe that the provision was implemented at the last minute to appease Turkey's powerful generics producers. Turkish officials have said nothing about this action item since receiving the Special 301 Initiative from us in August.

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17. (SBU) U.S. PhRMA company representatives in Turkey have mixed views about how to implement the request to create a system of coordination between Turkish health and patent authorities similar to the one used in the U.S. One U.S. company representative cautioned against pushing anything that would require generic and innovative companies to publish their applications for marketing approval in the Turkish National Gazette. He voiced a previous request that the Turkish MOH and Patent Institute (TPI) develop a system of linkages. Turkish officials maintain that their system is in compliance with EU norms. They also argue that a linkage system between the MOH and Turkish Patent Institute is not an international requirement and therefore not something on which the GOT is ready to expend limited resources. There has only been one case of a patent-infringing product reaching the market, a generic of the Eli Lilly antidepressant Zyprexa.

Piracy and Counterfeiting

18. (U) Action Item: 4) Continue the IPR enforcement campaign against piracy and counterfeiting (especially against book piracy) and provide quarterly and annual statistical readouts of success. In particular, please provide updates on the Turkish Government's plans to:

- provide training to police and customs officials on fighting IP infringement;
- implement a public awareness campaign;
- issue policies or regulations to stem piracy and counterfeiting;
- and
- cooperate with rights holders to undertake and publicize substantial enforcement IPR actions.

19. (SBU) The Turkish Ministry of Justice (MOJ) provided the following seizure statistics through December 12, 2007*:

2006	2007*	Total
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# of operations:	4,752	3,569	8,321
# arrested:	5,289	3,970	9,259
CONFISCATED MATERIAL:			
CD/VCD w/out banderole:	4,581,878	2,008,654	6,590,532
DVD w/out banderole:	436,302	476,846	913,148
Books w/out banderole:	217,745	222,107	439,852
Video Cassette w/out Banderole:	1,512	388	1,900
Cassette Tapes w/out Banderole:	75,295	26,943	102,238
Pornography:	160,078	83,867	243,945
CD/VCD w/ banderole:	5,002	12,165	17,167
Books w/ banderole:	2,755	10,490	13,245
Cassette Tapes w/ Banderole:	7,531	54,900	62,431
CD/VCD/DVD Covers:	138,943,851	8,202,553	147,146,404

¶10. (SBU) Representatives of Turkey's music and motion picture intellectual property protection interest groups, MU-YAP and AMPEC respectively, told us that overall they are pleased with the Turkish National Police and Jandarma's cooperation in conducting raids and seizures of pirated materials. The 2006 law providing cash incentives for law enforcement officials involved in such raids has reaped substantial benefits. Problems still remain, however, in the court system and with Turkish Customs officials. Ahmet Asena, Secretary General of MU-YAP, told us that with the increase in the

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availability of Internet music piracy, judges with little training on the intricacies of IPR law have had difficulty successfully prosecuting the cases with the evidence presented. AMPEC Secretary General Nilufer Sapancilar told us that Turkish Customs officials lack motivation and prefer to prosecute piracy cases under the smuggling law instead of the IPR law because it is easier and the penalties are more severe.

¶11. (SBU) Asena explained that the decrease in the amount of pirated music seized is because sellers are no longer stockpiling illegal

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copies. Instead, consumers go to a place where they can buy pirated music and have a mix CD-R burned for them. Sapancilar told us that seizures have decreased recently because storage warehouses are full and new ones are being built but have not been completed. While Turkish legislation allows a prosecutor to introduce a sample of the seized goods as evidence during a case, Turkish judges still insist that the entire seizure be stored in warehouses as evidence throughout the court proceedings. This evidence must be maintained throughout the appeals process as well, and since all IPR cases must go to Turkey's 7th Court of appeal, this means long delays and storage time. There has not been an appellate decision in an IPR case since 2004. Sapancilar was pleased to report, however, that street sales of pirated motion pictures are down 80% in Turkey, and street vendors are scarce.

¶12. (SBU) Both Asena and Sapancilar praised the latest amendment to Turkey's IPR law that allows a court to shut down an Internet site with illegal content. Both have had success in quickly shutting down access to sites that permit illegal downloading, including piratebay.com and other music piracy sites. The legislation requires that the site be blocked within ten days of a complaint, and both said the courts are adhering to this requirement.

¶13. (SBU) Sapancilar provided statistics on the number of

investigations, raids and legal actions taken from 1988 through October 2007. A breakout of the last three years is as follows:

Year	Investigations	Raids	Legal Action Taken	Decisions
2005	958	926	885	49
2006	2070	1655	1585	60
2007	1021 (10/07)	857	828	124

Software Piracy

¶14. (U) Action Item: 5) Issue a government-wide request for statistical reports demonstrating compliance with the 1998 governmental decree mandating the use of licensed software in governmental ministries, as well as monitor compliance of ministries with the decree. Take actions against business software piracy in the private sector and by individuals, including by initiating enforcement actions and launching a public awareness campaign.

¶15. (SBU) Turkey's Ministry of Culture and Tourism has responsibility for reissuing the Prime Ministerial decree requiring the use of licensed software in government agencies, something they hope to have completed by early next year. Statistics are not yet available about government compliance.

¶16. (SBU) Turkey's Business Software Alliance (BSA) chapter chair Elcim Barkay expressed little concern about pirated software use in government offices but told us that currently about 60% of software used in Turkish homes is unlicensed. She plans to shift BSA and Microsoft's (for whom she works) focus from the criminal aspects of using pirated software to a public awareness campaign on how respect for IPR can bring better jobs and a stronger economy for Turkey's youth. Barkay is also focusing on programs in Turkey's elementary schools and hopes to fund a competition in Turkey's universities where students will design a public awareness campaign. She agreed that Turkish judges are having difficulty prosecuting IPR cases. She offered BSA's assistance in translating the training materials provided to English-speaking judges who participate in USPTO courses in the U.S. into Turkish for the 90% of Turkish judges who do not speak English.

WIPO Treaties

¶17. (U) Action Item: 6) Work to address remaining deficiencies in Turkey's copyright law to implement fully the WIPO Internet Treaties (WCT and WPPT). The U.S. will work together with Turkey to ensure Turkey's full implementation of the WIPO Internet Treaties.

¶18. (SBU) Turkish government officials have taken great pride in their 2007 ratification of the WIPO Internet Treaties. We would suggest that USTR use the proposed January 2008 DVC with FTU officials as an opportunity to explain in better detail the deficiencies found in Turkey's current copyright legislation.

Comment

¶19. (SBU) Turkey has made little progress on the Advance Special 301

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Initiative. While FTU officials enthusiastically received it, we believe that they met resistance from the other Turkish ministries and agencies responsible for implementing the action items. While industry has noted some positive developments, the situation on the ground still indicates that Turkey's IPR legislation is sufficient, but its implementation and enforcement is not. During a December 5 meeting, PhRMA company representatives in Turkey told us they would go into this year's Special 301 review with no preconceived ideas about their recommendation. Subsequently, however, they indicated that PhRMA will likely recommend that Turkey remain on the Priority Watch List in 2008, a move that makes it difficult to bring Turkey down to the Watch List without tangible action by the GOT between now and April 2008. We welcome a visit by D/USTR John Veroneau in

January to reinforce our IPR message but recognize that there is little time left to complete these action items before the 2008 Special 301 Report and U.S.-Turkey TIFA talks. End comment.

WILSON